

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BAGLY, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*

Defendants.

Civil Action No. 20-cv-11297-PBS

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, and Local Rule 56.1, Plaintiffs, by and through their counsel, move for summary judgment on three of the four counts in their Amended Complaint: Count I for violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A), for agency action not in accordance with law, Count II for violation of the APA, 5 U.S.C. § 706(2)(A), for agency action that is arbitrary, capricious, and an abuse of discretion, and Count IV for violation of the APA, 5 U.S.C. § 706(2)(A), for adopting an enforcement policy narrowing the scope of covered entities that is contrary to law.

Plaintiffs’ motion is based on the pleadings, files, records (including the administrative record), and proceedings in this case and Plaintiffs’ Memorandum of Law, Attorney Declaration of Jo-Ann Sagar,¹ and Declarations of Patrick McGovern, Aaron M. Gonzales, Grace S. Stowell, Tony Hoang, Allison Scott, Rachael Lorenzo, Alice Riener, and Jordina Shanks.

¹ As this matter involves Administrative Procedure Act issues, Plaintiffs submit, in lieu of a Statement of Facts, an Attorney Declaration that identifies comments before the Government and in the administrative record.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Plaintiffs respectfully request oral argument in connection with this Motion.

Dated: March 19, 2024

Respectfully submitted,
/s/ Gregory F. Noonan
Gregory F. Noonan
(BBO# 651035)
Safa Osmani
(BBO# 697034)
HOGAN LOVELLS US LLP
125 High Street
Boston, MA 02110
(617) 371-1000
gregory.noonan@hoganlovells.com
safa.osmani@hoganlovells.com

Jessica L. Ellsworth*
Jo-Ann Sagar*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com
jo-ann.sagar@hoganlovells.com

Peter William Bautz*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017
(212) 918-3000
peter.bautz@hoganlovells.com

Sydney Duncan*
Shayna Medley*
TRANSGENDER LEGAL DEFENSE &
EDUCATION FUND
520 8th Avenue, Suite 2204
New York, NY 10018
(646) 898-2205
sduncan@transgenderlegal.org
smedley@transgenderlegal.org

Dale Melchert*
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
(510) 407-6367
dale@transgenderlawcenter.org

Michelle Banker*
Alison Tanner*
Kenna Titus*
NATIONAL WOMEN'S LAW CENTER
1350 Eye Street NW, Suite 700
Washington, DC 20002
(202) 588-5180
mbanker@nwlc.org
atanner@nwlc.org
kstitus@nwlc.org

Lynly Egyes*
TRANSGENDER LAW CENTER
594 Dean Street
Brooklyn, NY 11238
(973) 454-6325
lynly@transgenderlawcenter.org

Maryanne I. Tomazic*
CENTER FOR HEALTH LAW AND POLICY
INNOVATION
Harvard Law School
1585 Massachusetts Avenue
Cambridge, MA 02138
(617) 496-1668
mtomazic@law.harvard.edu

**Admitted Pro Hac Vice
Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 19, 2024, a copy of the foregoing was filed and served via ECF on all counsel of record.

/s/ Gregory F. Noonan

Gregory F. Noonan

LOCAL RULE 7.1(a)(2) CERTIFICATION

I certify that Plaintiffs complied with the provisions of Local Rule 7.1(a)(2) by conferring with counsel for Defendants on March 13, 2024. The parties were unable to agree with respect to the issues raised in Plaintiffs' Motion for Partial Summary Judgment, and are thus at an impasse and require the Court's assistance to resolve the dispute.

Dated: March 19, 2024

/s/ Gregory F. Noonan

Gregory F. Noonan